

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

<b>UNITED STATES OF AMERICA,</b>	)	Cause No. CR-03-80-BLG-RFC
	)	
Plaintiff,	)	
	)	
v.	)	<b>O R D E R</b>
	)	
<b>SERGIO MORENO,</b>	)	
	)	
Defendant.	)	
_____	)	

This Court sentenced Defendant to a term of 135 months imprisonment in January of 2005. This sentence was rendered pursuant to the United States Sentencing Guidelines, which at the time were mandatory. Subsequently, the United States Supreme Court has held that the Federal Sentencing Guidelines are advisory. *United States v. Booker*, 125 S.Ct. 738, 764 (2005). On May 15, 2006, the Ninth Circuit remanded Defendant's sentence for reconsideration in light of *Booker* and *Ameline*.

Pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005), this Court must determine "whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory." *Id.* at 1084-85.

In this instance, after reviewing the record, the Court answers the question in the negative-  
-Defendant Moreno's sentence would not have been materially different had it known that the  
Guidelines were advisory.

Under *United States v. Mix*, \_\_\_\_ F.3d \_\_\_\_, 2006 WL 2268636 (9th Cir. 2006) (as  
amended), this Court is required, in fashioning a reasonable sentence to conduct parallel analysis –  
first employing the Guidelines, and then considering the non-guideline sentencing factors under §  
3553(a). Pursuant to this directive, the Court concludes that the Guidelines, under the facts and  
circumstances of this particular case, do adequately take account of the § 3553(a) sentencing  
factors. Therefore, the Court determines that resentencing Defendant Moreno is unwarranted as  
his sentence would not materially differ under the advisory guideline regime.

DATED this 24th day of August, 2006.

/s/ Richard F. Cebull  
RICHARD F. CEBULL  
U.S. DISTRICT JUDGE

cc:  
June Lord  
AUSA Marcia Hurd  
Probation